

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

In re J.L., a Person Coming Under the
Juvenile Court Law.

H039260
(Santa Clara County
Super. Ct. No. JD18242)

SANTA CLARA COUNTY
DEPARTMENT OF FAMILY AND
CHILDREN'S SERVICES,

Plaintiff and Respondent,

v.

M.L.,

Defendant and Appellant.

M.L. (mother) appeals from an order of the juvenile court granting a Welfare and Institutions Code section 388 petition filed by the Santa Clara County Department of Family and Children's Services (Department) suspending mother's visitations with J.L. (son).¹ Mother argues that the order is unsupported by evidence. Mother also contends that the Department violated the juvenile court's earlier visitation order made in 2012.

During the pendency of this current appeal, the juvenile court conducted a contested 12-month review hearing. The juvenile court subsequently terminated mother's reunification services and visits with son, and made a finding that the Department provided reasonable reunification services to mother. Mother filed a petition

¹ Further statutory references are to the Welfare and Institutions Code.

for writ of extraordinary mandamus with this court, which we denied on its merits on June 12, 2013. (*M.L. v. Superior Court* (Jun. 12, 2013) H039486 [nonpub. opn.] (*M.L.*).)² Given the actions of the juvenile court, and our denial of defendant's petition on its merits, we dismiss this appeal as moot.

FACTUAL AND PROCEDURAL BACKGROUND³

Due to the nature of our disposition, it is unnecessary to provide a detailed description of the factual and procedural background of this case. The Department filed an amended dependency petition pursuant to section 300, subdivisions (b) (failure to protect) and (c) (serious emotional harm) on February 8, 2012. The report indicated that mother's home was cluttered, and that mother herself stated the home was not suitable for son. The social worker expressed concern that mother may have untreated mental health problems. Son had anxiety and depression issues, and had daily temper tantrums. Son often became physically violent and would kick, bite and hit others. Son also engaged in self-harm behaviors. At the time, son did not live with mother and instead resided with a family friend. After the section 300 hearing, the juvenile court ordered reunification services for mother and further ordered her to complete a parenting class. The court also ordered supervised therapeutic visits between mother and son once a week for one hour.

The six-month review hearing was held on August 27, 2012, and was continued to September 27, 2012. After the September hearing, the juvenile court ordered son to have supervised visits with mother every other week for one hour. On November 14, 2012, the

² On our own motion, we take judicial notice of the record and our prior opinion in *M.L., supra*, H039486. (Evid. Code, § 452, subd. (d).) Our unpublished opinion discusses the subsequent 12-month review hearing conducted by the juvenile court and the order made by the juvenile court after its hearing terminating mother's reunification services and visits with son.

³ Some of the facts and background for this case are taken from the record filed in *In re J.L.; Santa Clara County Department of Family and Children's Services v. M.L.*, H038961, which we took judicial notice of on June 6, 2013.

Department filed a petition for modification of the juvenile court's September order pursuant to section 388, seeking to terminate visits between mother and son. The juvenile court temporarily suspended visitation on November 15, 2012, pending a hearing on the matter. The juvenile court then conducted a contested section 388 hearing beginning on January 14, 2013. During the contested hearing, son testified that visits with mother made him feel uncomfortable, and that mother scared him. The social worker testified that the visits were not going well, as son demonstrated anger and stress. Mother testified that she did not believe her son was afraid of her, and that the visits were a sham.

On January 22, 2013, the juvenile court entered an order granting the Department's section 388 petition in part. Instead of terminating visitation, the juvenile court suspended visitation between mother and son, pending more information from son's therapist. Mother filed a timely notice of appeal over this order granting the Department's section 388 petition on January 25, 2013. Mother argued that the Department failed to arrange enough visits with son contrary to the juvenile court's prior visitation orders, as only several visits took place between mother and son. Mother also contended that there was no evidence of a change of circumstance that justified the juvenile court's grant of the Department's section 388 petition.

While this appeal was pending, the juvenile court conducted a 12-month review hearing on February 11, 2013. (*M.L., supra*, H039486.) After the hearing, the juvenile court determined that mother had received reasonable reunification services, and terminated mother's visitation with son. Mother filed a petition for writ of mandamus with this court, which we denied on its merits on June 12, 2013. (*M.L., supra*, H039486.) In an unpublished opinion, this court found that the juvenile court did not err in its determination that the Department had provided reasonable reunification services to

mother. This court further found no error with the juvenile court's termination of mother's visitation with son prior to the 366.26 hearing. (*M.L., supra*, H039486.)

DISCUSSION

Neither party raised the issue of whether or not this instant appeal is moot in light of this court's denial of mother's petition for writ of mandamus on June 12, 2013 (*M.L., supra*, H039486) in their briefs with this court. We requested that both parties file supplemental letter briefs addressing the issue of mootness. In its supplemental brief, the Department asserts that this appeal is moot and should be dismissed. Mother argues that this appeal is not moot, as under section 366.21, subdivision (h), a court may still order visitation after termination of reunification services. We agree with the Department's view.

An action that originally was based on a justiciable controversy cannot be maintained on appeal if the question has become moot by subsequent acts or events. A reversal in such a case would be without practical effect, and the appeal will therefore be dismissed. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 404.) Here, the juvenile court has already terminated mother's visits with son after finding that continuing visits would be detrimental to son, and after making a determination that mother was provided reasonable reunification services. Mother has already filed a petition for writ of mandamus with this court over this order, arguing that the juvenile court erred in these findings. We evaluated mother's arguments on these points, and denied her petition on the merits. Mother argues that the section 388 visitation issue was not cognizable in the writ proceedings, and that mother's trial counsel's brief argument on the matter in the petition should not serve as a basis for a final resolution on the visitation issue. We disagree with this assessment, as the issue of visitation was before the court during the 12-month review hearing. The juvenile court made a finding on that issue, and this court found no error. (*M.L., supra*, H039486.) Similarly, mother's argument that the Department failed

to arrange sufficient visitation with son was also brought in the petition with this court when she argued the Department failed to provide reasonable reunification services. Again, we found no error with the juvenile court's finding after the 12-month review hearing on that issue. (*Ibid.*)

Furthermore, reversal of the order suspending visitation would provide no practical remedy for mother, as the juvenile court has already terminated mother's visits with son after the 12-month review hearing. Mother's proper remedy, which she has already sought, was to file a petition for writ of mandamus after the 12-month review hearing to challenge the juvenile court's subsequent termination of her visits with son.

We acknowledge that appellate courts have an inherent discretion to decide moot cases that pose “ ‘an issue of broad public interest that is likely to recur.’ ” (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) However, as the Department asserts, defendant's case here does not present a broad issue of public interest. The issue of what showing is needed to sustain a section 388 petition has been analyzed and reviewed in other appellate cases. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 532-535; *In re Casey D.* (1999) 70 Cal.App.4th 38, 47.) Accordingly, the issues presented in mother's appeal are not novel enough to warrant consideration of the moot appeal.

DISPOSITION

The appeal is dismissed as moot.

Premo, J.

WE CONCUR:

Rushing, P.J.

Elia, J.